THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19476 of 2005

15.9.2005

Between:

Bhavani Apartments-III Owners Welfare Association,

Balayya Sastry Layout, Visakhapatnam.

… Petitioner

AND

1. Principal Secretary, Municipal Administration & Urban Development,

Secretariat, Hyderabad and another.

… Respondents

ORDER:

Bhavani Apartments-III Owners Welfare Association, the petitioner herein, assails the order dated 30.8.2005 passed by the second respondent. By the impugned order, M/s.Bhavani Engineering Company, Sri P.Noushad Khan and Sri B.Ramana Murthy were directed to remove unauthorized two flats constructed in stilt floor, which is meant for parking. The same is challenged as illegal and arbitrary. The persons to whom the impugned order was sent have not challenged the same before this Court. The Apartments Owners Welfare Association impugns the said order espousing the cause of the flat owners.

The second respondent issued building permission on 15.2.1992 to the promoter/builder. Subsequently, the first respondent also granted permission for construction of 16 additional flats. The permission was initially granted for construction of 1+4 including the stilt floor for the purpose of parking. The builder constructed 36 flats and sold them away to various owners. Almost all the flat owners formed into a society.

It appears that on 06.4.1994, the officials of the second respondent Corporation visited the apartments and pointed out certain deviations. Apprehending demolition, the builder/promoter filed O.S.No.710 of 1994 on the file of the Court of IV Additional Junior Civil Judge, Visakhapatnam. The same was dismissed. The appeal being A.S.No.107 of 1998 was also dismissed against which the second appeal being S.A.No.946 of 2005 is filed before this Court. Be that as it is, the petitioner society submitted a representation on 09.4.1998 to the first respondent for regularization of the building plan as there are certain violations. When the same was pending for consideration, the petitioner filed a writ petition being W.P.No.20275 of 2004 before

this Court for appropriate directions to the respondents to dispose of their application for regularization. Accordingly, this Court by an order dated 05.11.2004 directed the respondents to pass appropriate orders on the representation made by the petitioners. The petitioner alleges that no orders are passed thereon by the first respondent.

The second respondent issued notice to M/s.Bhavani Engineering Company to remove unauthorized construction i.e., two flats in stilt floor within 24 hours. The petitioner alleges that M/s.P.Noushad Khan and B.Ramana Murthy are the members of the association and therefore, this writ petition is filed on their behalf.

One of the contentions raised by the learned Counsel for the petitioner is that the representation made by the petitioner has not been considered. The learned Standing Counsel for Visakhapatnam Municipal Corporation has placed before this Court the Government Memo dated 06.8.1998 wherein the representation/application of the petitioner for regularization of unauthorized construction was rejected. Further, it is submitted by the learned Standing Counsel that the constructions made in the parking area cannot be regularized as per the instructions issued by the Government in G.O.Ms.No.419 dated 30.7.1998. This has force. When the builder has obtained permission for construction of stilt + 4 floors and stilt floor is meant for parking area, it would be illegal for making any construction and it would be further illegal to sell those flats to third parties. Therefore, this Court does not find any infirmity in the proceedings/order passed by the second respondent directing the builder and two flat owners to remove the unauthorized constructions. In such matters, if this Court interferes in exercise of powers under Article 226 of Constitution of India, the same would amount to legalizing unauthorized constructions, which is not permissible under law. Any Mandamus that is issued by this Court should be in accordance with law and no prerogative writ can be issued, which would be illegal or tend to direct the public authorities to act in an illegal manner.

The writ petition, for the above reasons, is dismissed. No costs.

_____

(**V.V.S.RAO,J**)

September 15, 2005.

YS